Hearing Date: March 2, 2023 at 10:00 a.m. (prevailing Eastern Time)
Re: Docket Nos. 1059 and 1061

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
VOYAGER DIGITAL HOLDINGS, INC., *et al.*,	)	Case No. 22-10943 (MEW)
Debtors.[1]	)	(Jointly Administered)

STATEMENT OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS IN SUPPORT OF THE THIRD AMENDED JOINT PLAN OF VOYAGER DIGITAL HOLDINGS, INC. AND ITS DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

The Official Committee of Unsecured Creditors (the "Committee") appointed in the chapter 11 cases (the "Chapter 11 Cases") of the above-captioned debtors (collectively, the

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Voyager Digital Holdings, Inc. (7687); Voyager Digital Ltd. (7224); and Voyager Digital, LLC (8013). The location of the Voyager Digital Holdings, Inc.'s and Voyager Digital Ltd.'s principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003. Voyager Digital, LLC's principal place of business is 701 S. Miami Ave, 8th Floor, Miami, FL 33131.

"Debtors") hereby files this statement[2] in support of the *Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (as may be modified, amended, or supplemented, the "Plan")[3] and in reply to certain objections to the Plan, including the: (i) *Notice of Filing of Objection of Unsecured Creditors to 1) Debtors' Motion for Final Order Approving the Amended Purchase Agreement and Amended Disclosure Statement With Respect to the Appropriateness of Third Party Releases, 2) the Inadequacy of the Plan to Meet the Bankruptcy Fair and Equitable Standard for the Outcome of VGX, and 3) the Appointment of the Proposed Wind Down Trustee, Legal Counsel and Existing UCC Members* [Docket No. 1059]; and (ii) *Objection to Disclosure Statements and Plan, with Motion to: 1) Remove Existing Debtor and UCC Leadership, and their Appointees for Administration of Wind Down Trust, in Lieu of UST Appointed Trustee 2) Classify Debtor Creditors as Fraud Victims for Relief Under IRS Revenue Ruling 2009-9 3) Remove All Releases for Debtors and 3rd Parties* [Docket No. 1061]. In support of the Statement, the Committee submits the Declaration of Jason Raznick, attached hereto as **Exhibit A**. In further support of this statement, the Committee respectfully states as follows:

PRELIMINARY STATEMENT

1. After careful analysis and consultation with its advisors, the Committee is confident that the Plan represents the best possible outcome for general unsecured creditors. As such, the Committee joins the Debtors' Confirmation Brief and fully supports the Plan.

2. The Committee's primary goal throughout these Chapter 11 Cases has been to distribute the maximum amount of crypto and fiat as quickly as possible to creditors and

[2] Contemporaneous with the filing of this Statement, the Debtors are filing their confirmation brief (the "Confirmation Brief").

[3] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Plan.

preserve claims that will allow a post-confirmation entity (*i.e.*, the Wind-Down Debtor) to generate future distributions, all in an effort to bring creditors as close to whole as possible. To accomplish this goal, the Committee negotiated extensively with the Debtors regarding the Releases, the Plan Settlement, and the Wind-Down Debtor. The culmination of those negotiations is the Plan, which also embodies the Sale Transaction, all of which provide the highest and best value for creditors as well as the fastest and most efficient path to distributions.

3. Certain *pro se* creditors, among others, have raised concerns with the Plan. Although the Committee would not ordinarily publicly disclose deep insights into discussions, negotiations, and analyses that the Committee has engaged in throughout the case, such as how particular committee members voted on certain issues, the Committee supports full transparency for all creditors and providing a clear record for this Court to confirm the Plan.

4. For these reasons and the reasons discussed below, the Plan should be confirmed.

BACKGROUND

5. On July 5, 2022 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. On July 19, 2022, the Office of the United States Trustee for the Southern District of New York appointed the Committee pursuant to section 1102(a) of the Bankruptcy Code. Docket No. 106.

STATEMENT

I. The Plan

a. The Committee Investigation

7. A special committee of independent directors of the Debtors (the "Special Committee") was appointed to investigate claims that the Debtors may have against Mr. Ehrlich and other insiders. The Committee conducted its own investigation (the "Committee Investigation") of the claims on behalf of unsecured creditors. The Committee Investigation was necessary to ensure that no viable causes of action against insiders would be released through any chapter 11 plan proposed by the Debtors absent fair compensation.

8. The Committee Investigation revealed that the Debtors' Chief Executive Officer, Stephen Ehrlich, and the Debtors' Chief Commercial Officer, Evan Psaropoulos, were extremely careless in their investigation of Three Arrows Capital Ltd.'s ("3AC") creditworthiness and in their decision to loan almost $1 billion to 3AC. As a result, the Committee concluded that the Debtors have valid and substantial claims against Mr. Ehrlich and Mr. Psaropoulos for breach of their duties of care relating to their role in approving the Debtors' loans to 3AC.

9. On October 5, 2022, the Debtors filed the *Second Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 496] (the "Second Amended Plan"). The Second Amended Plan contained broad releases, including releases of the Debtors' causes of action against Mr. Ehrlich and Mr. Psaropoulos (the "Releases"), without any consideration going to the Debtors in exchange for those Releases. *See generally* Second Amended Plan, Art. VIII(B). This outcome is precisely why the Committee conducted its investigation.

10. Accordingly, on October 12, 2022, the Committee filed the *Objection of the Official Committee of Unsecured Creditors to Debtors' Motion for Entry of an Order Approving (I) the Adequacy of the Amended Disclosure Statement, (II) Solicitation and Notice Procedures, (III) Forms of Ballots and Notices in Connection Therewith, and (IV) Certain Dates with Respect Thereto* [Docket No. 526] (the "Disclosure Statement Objection").[4] The Committee's consternation with the Releases was addressed in the Disclosure Statement Objection, which stated:

> The Debtors' directors and officers, including CEO Stephen Ehrlich approved loans to 3AC of almost $1 billion with almost no due diligence whatsoever, in a blatant disregard of their fiduciary obligations. This alone caused the Debtors to suffer up to $650 million in losses when 3AC defaulted on those loans three months later. The Debtors' directors and officers also operated illegally without proper licensing in 23 states, during which time the Debtors (and specifically Mr. Ehrlich) advertised that the Debtors were licensed in 49 out of 50 states. Then, on the eve of bankruptcy, the Debtors transferred $10 million to obtain a $10 million insurance policy, which can only be used to cover legal fees that the directors and officers will likely incur to defend lawsuits brought against them for their prior misconduct. This was an act of self-dealing by the directors and officers, by using an insolvent company's money to pay their own legal fees ahead of any payments to the Debtors' creditors. Put simply, the Committee uncovered substantial evidence of wrongdoing, and believes that these causes of action, if pursued, would result in, at a minimum, *tens of millions of dollars* (and likely more) in value to the Debtors' creditors.

Disclosure Statement Obj., ¶ 4 (emphasis in original). Most troubling about the proposed Releases is that they were being provided for no consideration. As the Committee explained, "the beneficiaries of the releases are providing the Debtors with **no consideration whatsoever** in exchange for the releases." *Id*. at ¶ 2 (emphasis in original).

11. Although the Committee wanted to avoid causing delays to plan confirmation, the Special Committee had the sole authority to prosecute, settle, or extinguish any and all claims or causes of action on behalf of the Debtors. Thus, the Committee's only option to ensure that

[4] An unredacted copy of the Disclosure Statement Objection is available at Docket No. 998.

viable causes of action were not released for no consideration was to object to the Releases and contest plan confirmation, with all the attendant cost and expense.

b. The Plan Settlement

12. The Committee's decisions throughout these Chapter 11 Cases have been rooted in the Committee's underlying goal: maximize distributions to creditors and return funds as quickly as possible. As part of this goal, the Committee frequently needed to decide whether to fight or settle, as is the choice committees need to make throughout most chapter 11 cases. Thus, although the Committee remained steadfast in preparing to object to the Releases, the Committee took a balanced approach by engaging with the Special Committee and the Debtors to discuss a potential resolution.

13. The Special Committee, through its counsel, proposed a settlement that would require Mr. Ehrlich to pay the Debtors $1.125 million in exchange for releases of personal liability, but would preserve the Debtors' rights to bring their claims against Mr. Ehrlich and Mr. Psaropoulos with the proviso that the Debtors' recovery would be limited to the amount payable under the D&O insurance policies. The Committee, through its counsel, pushed back stating that $1.125 million was insufficient. The Special Committee argued, however, that neither Mr. Ehrlich nor Mr. Psaropoulos had significant assets against which the Debtors could hope to collect.

14. The Committee responded that it (and the Special Committee) must be permitted to investigate Mr. Ehrlich's and Mr. Psaropoulos' personal finances to determine the size of their personal assets, which would inform the extent to which a finding of liability would lead to a tangible recovery for creditors. In the meantime, both individuals provided written financial disclosures attesting to their assets under penalty of perjury. According to those financial

statements, neither Mr. Ehrlich nor Mr. Psaropoulos had substantial assets that would justify the uncertainty and expense of protracted litigation over contesting plan confirmation, let alone pursuing breach of fiduciary duty claims against them (and related collectability efforts if successful). Mr. Ehrlich's disclosure reflected assets of approximately $2.7 million (inclusive of his home). At the request of the Committee, the financial disclosures also required Mr. Ehrlich and Mr. Psaropoulos to detail any transfers they made of their assets greater than $100,000 since January 1, 2020.

15. Ultimately, the parties reached a proposed settlement (the "Plan Settlement").[5] Although the amount is insignificant from the standpoint of the damages caused, the Plan Settlement requires Ehrlich to pay $1.125 million, which represents more than 40% of his personal assets. As stated above, despite the Plan Settlement, the Wind-Down Debtor will retain the right to prosecute claims against Mr. Ehrlich and Mr. Psaropoulos for their role in the 3AC loan, but the recovery is limited to amounts available under applicable D&O insurance policies.

16. In other words, although the Debtors are foregoing claims against Mr. Ehrlich's and Mr. Psaropoulos' *personal* assets, the Debtors' rights to sue those individuals are preserved, albeit effectively capped at the insurance policy limits. The Plan Settlement also: (i) requires Mr. Ehrlich and Mr. Psaropoulos to agree to subordinate any and all rights and entitlements under the Cornerstone A-Side Management Liability Insurance Policy to Voyager Digital Ltd., Policy Number ELU184179-22, to any recovery by the Debtors and/or the Wind Down Debtor on account of the Debtors' and/or Wind Down Debtor's claims for the avoidance of the premium

[5] The Plan Settlement is summarized in Section VII(A)(2)(b)(ii) of the *Second Amended Disclosure Statement Relating to the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 863] (as may be modified, amended, or supplemented, the "Disclosure Statement").

paid for the policy;[6] (ii) requires Mr. Ehrlich to subordinate prepetition claims and Mr. Psaropoulos to subordinate 50% of his prepetition claims such that creditor claims must be paid first; and (iii) requires Mr. Ehrlich and Mr. Psaropoulos to agree that, because the Debtors are in bankruptcy, the Debtors are unable to provide advancement or indemnification to Mr. Ehrlich and Mr. Psaropoulos, and Mr. Ehrlich's and Mr. Psaropoulos's recourse is limited to the Management Liability Policy, the Excess Policies, and the Side-A Policy (except as set forth in (i) above). *See generally* Disclosure Statement, pp. 53-55.

17. The Committee was surprised by Mr. Ehrlich's apparent lack of wealth, particularly given media reports regarding previous sales of his stock in the Debtors. Accordingly, the Committee also negotiated certain safeguards with respect to the Plan Settlement, including the continued investigation of the individuals' sworn financial statements. Pursuant to the Plan Settlement, (i) if the Committee uncovers that the sworn financial statements are materially untrue before confirmation then it will withdraw its support of the Releases, and (ii) if at any point in the future a court determines that the financial statements are materially untrue, then the Releases shall become void and ineffective.

18. In connection with the Plan Settlement, the Committee conducted a further investigation into the personal finances of Mr. Ehrlich and Mr. Psaropoulos, including serving requests for production on Mr. Ehrlich and Mr. Psaropoulos. The Committee reviewed 476 documents produced in response to those requests, including account statements and tax returns. The Committee also conducted depositions of Mr. Psaropoulos and Mr. Ehrlich on February 17, 2023 and February 28, 2023, respectively. Nothing the Committee learned from the documents

[6] On November 3, 2022, the Special Committee sent correspondence to one of the Debtors' two insurance carriers notifying them of the potential avoidance of amounts paid by the Debtors for the annual policy premium before the Petition Date. Docket No. 1000-1, n. 317.

produced and the two depositions has changed the Committee's view about the Debtors' ability to collect significant sums of money from either Mr. Ehrlich or Mr. Psaropoulos

c. The Committee's Plan Settlement Vote

19. The Committee is comprised of seven members. Docket No. 106. Each Committee member is a retail customer of the Debtors. Shortly after formation, the Committee selected Jason Raznick to serve as chair of the Committee by unanimous vote. Raznick Dec., ¶ 8.

20. The Committee meets regularly, with weekly standing calls, as well as specially called meetings, as necessary. Raznick Dec., ¶ 11. The Committee makes decisions by a majority vote, with each member's vote counting equally. *Id.* As the chair of the Committee, Mr. Raznick does not have a greater voice than any other Committee member. In the event of situations like a dead-lock vote, Mr. Raznick does not carry the controlling vote. *Id.*

21. As mentioned above, on October 12, 2022, the Committee filed an objection to the Releases in the Plan, which at the time provided no consideration to the Debtors. This also occurred prior to the Committee's receipt of the financial disclosure statements from Mr. Ehrlich and Mr. Psaropoulos attesting to their lack of significant assets. As a result of the negotiations that ensued (discussed above), the Committee held a two-hour meeting on October 16, 2022, the majority of which was dedicated to consideration of the proposed Plan Settlement. Raznick Dec., ¶ 12.

22. After a lengthy discussion of the pros and cons of the Plan Settlement, each Committee member was asked to vote on whether to accept or reject it. *Id.* A majority of the Committee members voted to *approve* the Plan Settlement. Mr. Raznick abstained. *Id.*

d. The Committee's Role in the Binance.US Negotiations

23. As discussed in greater detail in the Disclosure Statement, following the November 2022 FTX collapse, the Debtors engaged with alternative third-party purchasers to identify an alternative transaction partner. *See generally* Disclosure Statement, § II(B).

24. On December 9, 2022, the Debtors informed the Committee that they intended to proceed with a sale to BAM Trading Services, Inc. d/b/a Binance.US ("Binance.US"). At that time, the Committee immediately conducted a review of the material terms and mechanics of the proposed sale. The Committee was principally concerned with ensuring the safety of crypto that would be transferred by the Debtors to Binance.US given the unstable state of the crypto industry following FTX's collapse.

25. The initial Binance.US proposal contemplated the transfer of nearly all of the Debtors' crypto to Binance.US immediately upon closing. Certain of that crypto, however, would not be made available to creditors for up to six months because of, among other things, regulatory restrictions in four states.[7] This structure would put creditors at risk in the event of an unexpected Binance.US insolvency between the time that Binance.US received the crypto and when that crypto was made available to customers. Accordingly, the Committee viewed this structure as sub-optimal and voiced its concerns to the Debtors and Binance.US.

26. Although Binance.US assured the Committee that the crypto would be protected, given the unexpected collapse of FTX and the general risk of theft and fraud in the cryptocurrency industry, the Committee pushed for greater protections, going as far as indicating to Binance.US and the Debtors that the Committee was intending to object to the Binance.US

[7] *See generally Asset Purchase Agreement* attached as Exhibit B to the *Debtors' Motion for Entry of An Order (I) Authorizing Entry Into the Binance US Purchase Agreement and (II) Granting Related Relief* [Docket No. 775] (the "Sale Motion").

transaction. Accordingly, as of the December 21, 2022 Sale Motion filing, the Committee could not support the Binance.US transaction. Following the filing of the Sale Motion, however, the Committee worked diligently to include protections in the purchase agreement to accelerate recoveries and ensure the safety of creditors' crypto.

27. Binance.US ultimately supported the Committee's efforts and agreed to restructure the way in which crypto is transferred. On January 9, 2023, the Debtors filed the *First Amended Asset Purchase Agreement* [Docket No. 835] (the "APA"). Pursuant to the APA, after the transaction closes, crypto will move from the Debtors to Binance.US on a weekly basis, and the only crypto that will be transferred is crypto that will be immediately distributed to creditor accounts. In other words, cryptocurrency will not be transferred to Binance.US unless: (i) Binance.US has the required licenses or authorizations to make distributions in a creditor's state or territory; (ii) a creditor has signed up for Binance.US's platform; (iii) that creditor has met Binance.US's onboarding requirements; and (iv) Binance.US has received notice of the exact amount of distribution that will be made available to that creditor. As a result, the time between when Binance.US receives crypto from the Debtors and when creditors can access, trade, convert, sell, stake, or withdraw that crypto is now very limited.

28. The foregoing material change, along with additional modifications reflected in the APA, provided the necessary protections that gave the Committee comfort to support the transaction. On January 9, 2023, the Committee filed its statement in support of the sale to Binance.US (the "Sale Transaction").[8] *See* Docket No. 837.

[8] Pursuant to the APA, the Debtors will retain "any preference or avoidance claim, right or cause of action under Chapter 5 of the Bankruptcy Code or any analogous state law claim against (i) Three Arrows Capital, Ltd. or any of its Affiliates, (ii) any insider as defined in the Bankruptcy Code, (iii) any other such claim, right or cause of action that Purchaser agrees in writing prior to the Closing may be retained by the Debtors, (iv) any person for an actual fraudulent transfer, and (v) West Realm Shires Inc., Alameda Ventures Ltd., or any of their Affiliates." APA, Art. XI (bbb). The Committee has negotiated with Binance.US for an additional

e. The Sale Transaction Is the Best Option to Maximize Recoveries

29. The Sale Transaction provides the highest and best value for the Debtors' creditors, as well as the fastest and most efficient path to distributions. Following the demise of FTX, the Committee considered two options: (1) self-liquidation; and (2) an alternative transaction with a third party. For the following reasons, the Committee supports the Sale Transaction.

30. ***First***, the Committee considered a "self-liquidation." This option avoided the risks associated with a third-party purchaser. However, there are significant regulatory and practical hurdles in returning hundreds of millions of dollars in fiat and crypto to creditors. For example, many creditors prefer distributions in crypto, but the Debtors' platform was the only place such creditors traded and held crypto. Those creditors would need to obtain self-hosted wallets or a new crypto exchange account to accept distributions. A self-liquidation plan would also likely include a large number of test transactions and other administrative burdens. Thus, an operating crypto exchange with the infrastructure to handle millions of retail customer crypto transactions appeared to be the most efficient option. Ultimately, the Committee determined that conducting a self-liquidation would materially decrease recoveries for a variety of reasons (*e.g.*, value leakage from mass sales of crypto and working capital funding) and delay returning fiat and crypto to creditors, as compared to a sale to a third party. Moreover, Voyager would receive no cash consideration from a purchaser in a self-liquidation, thereby further reducing creditor recoveries.

31. ***Second***, after FTX's collapse, other potential purchasers began to engage with the Debtors. Throughout this process, the Committee had extensive discussions with a number of

approximately 32,000 avoidance actions that will be retained by the Debtors. The parties are currently preparing definitive documentation regarding these actions.

interested parties to assess the relative value of their offers, including their ability to close timely. Ultimately, the only purchaser that presented an economically attractive and actionable offer was Binance.US. As discussed in greater detail above, the Committee has worked diligently to negotiate protections in the APA to accelerate recoveries to creditors and ensure that all crypto will be safe in the event of a Binance.US insolvency.

32. Additionally, the Plan includes a "toggle" feature wherein if the Sale Transaction fails, the Debtors have the ability to distribute crypto to creditors outside of a sale without delay (*i.e.*, without the need to prepare, file, and solicit a new chapter 11 plan). If the Sale Transaction fails to close, the Plan permits the Debtors to conduct a self-liquidation.

33. The alternatives to the Sale Transaction, including the self-liquidation "toggle," are not as favorable to the Debtors' estates or their creditors. Indeed, the Debtors' Liquidation Analysis reflects that the Sale Transaction will result in a 4% greater recovery (*i.e.*, approximately $100 million) than the "toggle", and a 10%-14% greater recovery (*i.e.*, approximately $200-$230 million) than a chapter 7 liquidation.[9] Based upon the Committee's analysis, and in full exercise of its fiduciary duties, the Committee has determined that the Plan provides the best possible means to expeditiously wind down the Debtors' estates, preserve any remaining value, and distribute that value to the creditor body. Thus, the Plan represents the only sensible outcome for all general unsecured creditors and the Debtors' estates under the circumstances of these Chapter 11 Cases. Indeed, the vast majority of creditors agree.[10]

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[9] The Liquidation Analysis is attached to the Disclosure Statement as Exhibit B. The Liquidation Analysis uses spot cryptocurrency prices as of December 18, 2022. Given the volatility of cryptocurrency, the values in the Liquidation Analysis are constantly changing. Regardless of the volatility, the conclusion reached in the Liquidation Analysis that the Sale Transaction will result in greater recoveries is constant.

[10] *See generally* Voting Report filed contemporaneously herewith (the "Voting Report"). Pursuant to the Voting Report: (i) 97% in number and 98% in dollar amount of voting Holders of Class 3 Account Holder Claims voted to accept the Plan; (ii) 100% in number and 100% in dollar amount of voting Holders of Class 4A OpCo General Unsecured Claims voted to accept the Plan; (iii) 80% in number and 100% in dollar amount of voting Holders of Class 4B HoldCo General Unsecured Claims voted to accept the Plan; and (iv) 90% in number and

f. Thousands of Causes of Action are Being Retained by the Wind-Down Debtor to be Pursued by the Plan Administrator

34. There are only two buckets of causes of action that are *not* being preserved for the Wind-Down Debtor.[11]

35. ***First***, the causes of action subject to the Releases. However, as discussed above, such causes of action are subject to a significant exception—the Plan Administrator is permitted to pursue certain causes of action against Mr. Ehrlich and Mr. Psaropoulos, limited to recoveries from the applicable D&O insurance policies. Further, in the event a court enters an order finding that the financial disclosures provided by Mr. Ehrlich and Mr. Psaropoulos are materially inaccurate, the Plan Releases become void.

36. ***Second***, avoidance actions that are being purchased by Binance.US, which includes avoidance actions against Account Holders. However, Binance.US has agreed to carve out approximately 32,000 parties subject to potential avoidance actions that were identified by the Committee.

37. ***All*** other causes of action, including claims against 3AC and FTX, are being preserved. If the Plan is confirmed, all such causes of action that the Debtors are entitled to bring against third parties will be transferred to the Wind-Down Debtor. Moreover, all causes of action contributed by creditors that opted in to contributing their third party claims to the Wind-Down Debtor will be transferred to the Wind-Down Debtor.

38. The contributed third party claim concept, which is embodied in Art. IV(R) of the Plan, can be a valuable source of recovery for creditors, and has been utilized in other cases. *See*,

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100% in dollar amount of voting Holders of Class 4C TopCo General Unsecured Claims voted to accept the Plan.

[11] *See generally Notice of Filing of First Amended Plan Supplement* [Docket No. 986], which includes the Schedule of Retained Causes of Action.

e.g., Zazzali v. Hirschler Fleischer, *P.C.,* 482 B.R. 495 (D. Del. 2012) (creditor claims assigned to a liquidating trust); *Grede v. Bank of New York Mellon*, 598 F.3d 899 (7th Cir. 2010) (same); *In re Woodbridge Group of Companies, LLC, et al*., Case No. 17-12560 (KJC), Docket No. 2903 (Bankr. D. Del. Oct. 26, 2018) (same); *In re Health Diagnostic Laboratory, Inc*., No. 15-32919, 2017 WL 4457609 (Bankr. E.D. Va. Oct. 4, 2017) (same); *In re Consolidated Meridian Funds*, 485 B.R. 604 (Bankr. W.D. Wa. 2013) (same); *Segner v. Securities America, Inc*., No. 3-10-cv-01884-F, 2011 WL 13394778 (N.D. Tex. Aug. 4, 2011) (same); *Taberna Capital Management, LLC v. Jaggi*, No. 08 Civ. 11355(DLC), 2010 WL 1424002 (S.D.N.Y. April 9, 2010) (same); *see also Semi–Tech Litigation, LLC v. Bankers Trust Co*., 272 F.Supp. 2d 319 (S.D.N.Y. 2003), *aff'd*, 450 F.3d 121 (2d Cir. 2006) (involving third party claims assigned to post confirmation litigation entity).

39. In most instances, a post-confirmation entity's acquisition of creditor claims is prudent when such claims are similar to and overlapping with facts underlying claims that the entity intends to investigate and pursue against third parties. *See, e.g., Grede*, 598 F.3d at 900 (assigning creditors believed they were defrauded by the debtor and the same third party); *Semi–Tech Litigation*, 272 F.Supp. at 321 (assigning creditors were beneficial owners of notes damaged by the same parties); *Health Diagnostic Laboratory*, 2017 WL 4457609, at *2-*3 (mass fraud in which assigning creditors had substantially the same claims against different third parties); *Zazzali*, 482 B.R. at 504 (ponzi scheme with overlapping claims); *Segner v. Securities America, Inc*., No. 3-10-cv-01884-F, 2011 WL 13394778 at *2 (same); *Consolidated Meridian Funds*, 485 B.R. at 609 (same); *Woodbridge Group of Companies*, Case No. 17-12560 (KJC), Docket No. 2903 (same). In these circumstances, the assignment of claims can be extraordinarily beneficial to creditors for several reasons, including: (i) it relieves creditors (or their

representatives) from the individual cost and time associated with litigation; (ii) it results in more efficiencies on multiple fronts, including a single party with one counsel pursuing defendants in a single forum, which also reduces the risk of duplicative and inconsistent litigation; and (iii) expedited litigation and greater likelihood of settlement given that the defendant can resolve many claims with a single settlement.

40. As the direct result of its negotiations with the Debtors, the Committee has ensured that the Plan Administrator, an independent fiduciary selected by the Committee, will assume control of the Wind-Down Debtor after the Effective Date of the Plan. The Plan Administrator will be responsible for investigating, pursuing, and prosecuting the preserved causes of action, including the contributed third-party causes of action, subject to review by an Oversight Committee that is comprised of three members of the Committee (*i.e.*, Russell Stewart, Richard Kiss, and Melissa Freeman).

II. The Plan Administrator

41. Certain *pro se* creditors have raised issues regarding the selection of the Plan Administrator. *See generally* Docket Nos. 1059 and 1061. These issues are addressed below.

a. The Selection of the Plan Administrator

42. On July 6, 2022, the Debtors filed the *Joint Plan of Reorganization of Voyager Digital Holdings, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 17] (the "Original Plan"). Pursuant to the Debtors' Original Plan, the Debtors' insiders were obtaining releases for no consideration, and *the Debtors* had the sole and exclusive authority to select new management of the reorganized company.[12] *See generally* Original Plan,

[12] On August 12, 2022, the Debtors filed the *First Amended Joint Plan of Reorganization of Voyager Digital Holdings, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 287], which sought the same relief.

Art. VIII(B). Moreover, the Original Plan stated that the Debtors' causes of actions would vest in the reorganized company and the decision as to whether to pursue such causes of actions would be at the discretion of the Debtors' hand-picked managers of the reorganized company. *See id.* at Art. IV(I) ("On and after the Effective Date, except as otherwise provided herein, each Reorganized Debtor may operate its business and may use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.").

43. The Committee was unwilling to permit the Debtors' current management to have a controlling role in any post-confirmation entity and, in particular, the decision to pursue any retained causes of action. Instead, the Committee began advocating that a separate post-confirmation vehicle should be established to pursue causes of action, and that vehicle should be led by someone appointed by the Committee to act in the best interests of creditors.

44. Ultimately, the Debtors agreed with the Committee's position, and the Second Amended Plan included the concept of a Wind-Down Trust and Wind-Down Trustee (each as defined in the Second Amended Plan) to be selected by the Committee, in consultation with the Debtors. Under the current amended Plan, the Wind-Down Trustee role has been replaced by a Plan Administrator.

45. On November 8, 2022, the Committee interviewed three individuals for the Plan Administrator role, including: (i) Anna Phillips; (ii) Stephen Gray; and (iii) Paul Hage. After the interviews, the Committee held a meeting to discuss the candidates and make a selection as to

who would serve in the role. Following a thorough discussion regarding the experience, costs, and expertise of the individuals, the Committee selected Mr. Hage by a majority vote.[13]

46. Mr. Hage's curriculum vitae (CV), which was provided to the Committee along with Ms. Phillips's and Mr. Gray's, is attached hereto as **Exhibit B**. As set forth on Mr. Hage's CV, Mr. Hage:

a. has twice been selected by the Sixth Circuit Court of Appeals as a finalist for a bankruptcy judgeship in the United States Bankruptcy Court for the Eastern District of Michigan;

b. is on the Board of Directors and Executive Committee, and serves as Secretary, of the American Bankruptcy Institute;

c. is a Fellow in the American College of Bankruptcy;

d. is certified by the American Board of Certification as a specialist in business bankruptcy law;

e. is an Executive Editor of the American Bankruptcy Institute Journal;

f. regularly authors and provides written contributions to bankruptcy publications and books, such as Norton Institutes on Bankruptcy Law, the American Bankruptcy Institute, the American Bar Association, ThomsonReuters, and the Journal of Bankruptcy Law & Practice;

g. is the Co-Chair of the Business Restructuring, Bankruptcy & Creditors' Rights Group at his law firm, Taft Stettinius & Hollister, LLP;

h. has received a number of prestigious bankruptcy-related awards, such as the American Bankruptcy Institute 40 Under 40 Award and American Bankruptcy Institute Committee Leader of the Year Award; and

i. is regularly invited to speak on bankruptcy-related topics, including, most recently, on third-party releases in chapter 11 bankruptcy at the Seventy-Sixth Judicial Conference of the Sixth Circuit Court of Appeals.

[13] On February 15, 2023, the Debtors filed the *Notice of Filing of Second Amended Plan Supplement* [Docket No. 1006], which identified (i) Paul Hage as the Plan Administrator and (ii) the Committee members that will comprise the Oversight Committee (i.e., Russell Stewart, Richard Kiss, and Melissa Freeman).

47. The Committee's decision to select Mr. Hage was based on, among other things: (i) Mr. Hage's institutional knowledge of these Chapter 11 Cases; (ii) the cost of Mr. Hage's services, which are less than any other candidate in consideration;[14] and (iii) Mr. Hage's extensive experience as a bankruptcy practitioner. Mr. Hage's CV speaks for itself. He has considerable experience in complex chapter 11 cases and representing post-confirmation entities, in addition to his vast publications and roles in bankruptcy-related academia. Such qualifications are the reason why Mr. Hage has been a finalist to serve as a bankruptcy judge on multiple occasions.

b. Any Perceived Connections Between the Committee and the Debtors are Misplaced

i. The Debtors and Benzinga

48. Mr. Raznick is the CEO of the news, data, and educational website "Benzinga," which is dedicated to building personal wealth.[15] Raznick Dec., ¶ 2. Benzinga's mission is to empower investors with information on investment opportunities. *Id.* Mr. Raznick founded Benzinga in 2010.[16] *Id.* In 2021, Mr. Raznick sold his majority stake in Benzinga to an unaffiliated investment fund.[17] *Id.* Since its launch, Benzinga has become an extremely popular hub for information on capital markets with approximately 25 million readers per month.[18] *Id.*

49. Benzinga is heavily focused on the stock market, cryptocurrency, and other developing technologies.[19] Raznick Dec., ¶ 2. As a media company in the cryptocurrency

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[14] Mr. Hage's hourly rate of $500/hour was also far more economical than the rates of others who were considered, some of which ranged up to $50,000/month, which is not atypical for liquidation trustees or plan administrators in cases of this magnitude.

[15] Benzinga is not a creditor in these Chapter 11 Cases.

[16] *See* https://www.benzinga.com/about ("Our mission is to connect the world with news, data and education that makes the path to financial prosperity easier for everyone, everyday").

[17] https://www.freep.com/story/money/business/2021/10/25/benzinga-detroit-sale/6172916001/.

[18] https://www.benzinga.com/about.

[19] https://www.benzinga.com/crypto.

industry, Benzinga and the Debtors often overlapped in business, much like Benzinga did with the 145 other cryptocurrency and crypto-adjacent companies that have advertised on Benzinga's website. Raznick Dec., ¶ 4. These relationships are important to cryptocurrency companies who seek to increase the visibility of their products and services through sponsorships and advertisements on Benzinga. *Id.* Indeed, before the Petition Date, the Debtors sponsored certain events hosted by Benzinga. *Id.* Each of these events had numerous other sponsors, including multiple other cryptocurrency companies. *Id.*

50. Mr. Raznick also became a contact of Stephen Ehrlich, the Debtors' CEO, and Mr. Raznick (not Benzinga) became one of the Debtors' largest customers (and now creditors) by depositing millions of dollars of his personal funds into his account with the Debtors.[20] Raznick Dec., ¶¶ 3, 5. Mr. Raznick, like all of the Debtors' customers, has been impacted directly and personally by these Chapter 11 Cases. Raznick Dec., ¶ 5. Indeed, Mr. Raznick was the Debtors' third largest creditor, as reflected on the Debtors' list of top creditors. Docket No. 1.

51. Any cordial relationship that existed between Mssrs. Ehrlich and Raznick ended after the Debtors commenced these Chapter 11 Cases. Raznick Dec., ¶ 6.

ii. The Committee's Retention of Professionals

52. After its appointment, the Committee received twelve pitchbooks from law firms seeking to represent the Committee. Raznick Dec., ¶ 10. After narrowing down the candidates to five law firms, the Committee conducted interviews of each of the five law firms on July 20, 2022. *Id.* The Committee deliberated for nearly two days before ultimately selecting McDermott

[20] To the Committee's knowledge, no Committee member other than Mr. Raznick had any relationship with Mr. Ehrlich prior to the Petition Date. None of the Committee's professionals had any relationship with Mr. Raznick prior to being interviewed by the Committee in these Chapter 11 Cases.

Will & Emery LLP ("McDermott") as its counsel. *Id.* Shortly thereafter, the Committee retained FTI Consulting, Inc. as its financial advisor. *Id.*

53. McDermott is an international law firm with more than 1,300 lawyers in 20 cities. McDermott has one of the largest crypto-specific legal practices in the world. McDermott's crypto team works exclusively on crypto-related matters. Like any other legal specialization, McDermott attends and sponsors crypto-specific events to generate brand awareness, remain current on crypto matters, and market McDermott's crypto capabilities.

54. On December 7, 2022, Joseph B. Evans, a partner at McDermott and counsel to the Committee, attended the "Future of Crypto" conference (the "Conference") organized by Benzinga in New York City, where Mr. Evans practices. Mr. Evans is the Co-Chair of the FinTech & Blockchain Group and Head of Crypto Litigation and Regulatory Defense at McDermott. The Conference, one of the largest crypto conferences nationwide, is known as the "biggest day of the year for crypto enthusiasts, entrepreneurs, investors and networkers, [bringing] together the brightest minds in crypto and dealmaking."[21] More than 80 companies sponsored the Conference, including a number of large professional service firms, such as Deloitte, Goodwin Proctor, and Venable.[22] McDermott purchased a $15,000 sponsorship for the Conference (sponsorships were available up to $150,000). Mr. Evans attended the conference with other members of McDermott's crypto-exclusive team.

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[21] *See* https://www.mwe.com/events/future-of-crypto-by-benzinga/#:~:text=Resolution%20FinTech%20%26%20Blockchain-,Overview,minds%20in%20crypto%20and%20dealmaking.

[22] *See* https://www.benzinga.com/events/crypto/.

iii. Mr. Hage Has No Affiliation with the Debtors

55. Mr. Hage has no affiliation with the Debtors. His experience with the Debtors is limited to his role as counsel to Mr. Raznick in these Chapter 11 Cases.[23] Any relationship between Mr. Raznick's company, Benzinga, and the Debtors or between Mssrs. Raznick and Ehrlich are irrelevant to Mr. Hage's credentials and abilities to serve as Plan Administrator for at least four reasons.

56. ***First***, Benzinga is not a creditor. Even if it were a creditor, Benzinga did not have any special relationship with the Debtors as compared to the 145 other crypto or crypto-adjacent companies that Benzinga conducts business with.

57. ***Second***, any relationship that Mr. Raznick had with Mr. Ehrlich soured after the Debtors commenced these Chapter 11 Cases, and Mr. Raznick was left with the inability to access millions of his personal assets (and is set to recover only a percentage of those assets as a result of the filing).

58. ***Third***, Mr. Raznick's role in these Chapter 11 Cases will cease as of the Effective Date when the Committee is dissolved.

59. ***Fourth***, as Plan Administrator, Mr. Hage serves in a fiduciary capacity obligated to act in the best interests of creditors. Mr. Hage is a decorated and respected figure in the bankruptcy community. If there was any indication that Mr. Hage would risk his status by derogating from these duties, the Committee would not have selected him to serve as Plan Administrator. If for some unknown reason Mr. Hage did so, creditors (and the Oversight Committee) have the right to pursue breach of fiduciary duty claims against him.

[23] Mr. Hage has not represented Mr. Raznick on any engagement other than in connection with these Chapter 11 Cases. Raznick Dec., ¶ 13.

60. Moreover, any assertion that Mr. Hage will not relentlessly pursue recoveries for general unsecured creditors is unfounded. Since the completion of the Committee Investigation, the Committee has maintained that there are viable causes of action against Mr. Ehrlich and Mr. Psaropoulos. Indeed, the ability to pursue such causes of action are preserved in the Plan Settlement up to applicable insurance amounts. Thus, Mr. Hage intends to pursue these actions upon being appointed as the Plan Administrator.

61. As a practical matter, the Plan Settlement should not have any relevance to Mr. Hage's appointment as Plan Administrator. If the Plan is confirmed and thus the Releases are approved, then even if there as an affiliation (there is not) between Mr. Hage and Mr. Ehrlich or the Debtors, there would be no incentive for Mr. Hage to derogate from his responsibilities because Mr. Ehrlich's assets cannot be pursued as part of the settlement.

62. For the foregoing reasons, the Committee submits that Mr. Hage is the ideal candidate to serve as the Plan Administrator.[24]

III. Communications with Creditors

63. These Chapter 11 Cases have presented many aspects that are novel to bankruptcy. One such aspect is that the substantial majority of the Debtors' general unsecured creditor body is comprised of retail customers who deposited their personal assets on the Debtors' platform. Accordingly, the Committee undertook unusual and proactive efforts to communicate with creditors.

[24] If the Plan is confirmed, Mr. Hage will be appointed on the Effective Date. Thereafter, Mr. Hage will have the ability to retain professionals in accordance with the Plan.

64. ***First***, the Committee established a social media presence, creating a Twitter page to share information with creditors in real time.[25] During these Chapter 11 Cases, the Committee has posted 200 tweets.

65. ***Second***, the Committee endeavored to host regular town halls on various platforms to reach the broadest audience. On August 11, 2022, the Committee conducted its first town hall by presenting a 51-minute video on the Chapter 11 Cases and general information regarding chapter 11.[26] On September 8, 2022, the Committee conducted its second town hall via a Reddit "Ask Me Anything," which permitted creditors to ask questions that could be answered directly by the Committee in writing.[27] On November 4, 2022, the Committee conducted its third town hall via Twitter Spaces, which permitted creditors to ask questions to Committee counsel directly.[28] On January 25, 2023, the Committee conducted its fourth town hall also via Twitter Spaces.[29]

66. The Committee also encouraged creditors to contact Committee counsel directly via email or phone with any questions. For example, Committee counsel had three phone calls and almost 30 email exchanges with creditor Trevor Brucker—one of the *pro se* creditors who has objected to the Plan.

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[25] The Committee's Twitter page currently has approximately 9,600 followers. The page is available at https://twitter.com/VoyagerUCC.

[26] The Committee's first town hall, which currently has approximately 8,700 views, is available at https://www.youtube.com/watch?v=ZLk4qsLpPck.

[27] The Committee's second town hall is available at https://www.reddit.com/r/VoyagerUCC/comments/x97dp7/ama_official_committee_of_unsecured_creditors_of/.

[28] The Committee's third town hall, which took place over approximately three hours with 10,800 people in attendance is available at https://twitter.com/VoyagerUCC/status/1588589175175274496.

[29] The Committee's fourth town hall, which took place over approximately four and a half hours with 4,500 people in attendance is available at https://twitter.com/VoyagerUCC/status/1618308205502947328.

67. As explained via Twitter and on each town hall, the Committee is bound by various forms of confidentiality agreements that prevent the Committee from responding to many of the questions that were asked by creditors, either directly or during town halls. Moreover, the Committee was unable to share information that might waive the attorney-client privilege with the Committee's counsel.

RESERVATION OF RIGHTS

68. The Committee reserves all rights to supplement this Statement in advance of the Confirmation Hearing, respond to any objections or modifications to the Plan, and to address any such issues at the Confirmation Hearing.

CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court confirm the Plan, overrule any objections thereto, and grant such other and further relief as the Court may deem just and proper.

Dated: New York, New York
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Counsel to the Official Committee of Unsecured Creditors

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of February 2023, I caused a true and correct copy of the foregoing *Statement of the Official Committee of Unsecured Creditors in Support of the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the "Statement") to be served on the Service List by (i) by electronic notification pursuant to the CM/ECF system for the United States Bankruptcy Court for the Southern District of New York, (ii) e-mail, or (iii) First Class U.S. Mail, as indicated in the attachment hereto. I further certify that I caused the Statement to be served on this 28th day of February 2023 upon the parties listed below by e-mail.

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